

Title	Small Claims: Request to Correct or Vacate Judgment (Amend Code Civ. Proc., §116.725)
Summary	The committee is proposing that the Judicial Council sponsor legislation to provide that a small claims motion to correct an error or vacate the judgment may be made (1) on the court's own motion at any time or (2) on a party's motion that must be filed within 30 days after the clerk mails notice of entry of the judgment to the parties, with only one motion allowed per party.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, 415-865-7669, cara.vonk@jud.ca.gov
Discussion	<p>Currently, Code of Civil Procedure section 116.725 does not limit the time that a court may correct a clerical error or set aside a judgment. Some small claims parties file a request to correct or vacate the judgment by letter or on Judicial Council form SC-108, <i>Request to Correct or Vacate Judgment</i>, long after the time for appeal has expired. Others may file successive requests to correct or vacate the judgment, which could result in multiple appeals on corrected or new judgments, prolonging finality and certainty of a small claims judgment.</p> <p>The proposal to amend Code of Civil Procedure section 116.725 was submitted by the California Judges Association (CJA) Committee on Sponsored Legislation and approved by the CJA Civil Law and Procedure Committee. It was reported by judges that some small claims litigants are filing motions to vacate long after the period for appeal has passed and that the statute creates a loophole that allows litigants in effect to file multiple appeals.</p> <p>The proposal that a motion to correct or vacate the judgment must be filed within 30 days after the clerk has mailed notice of entry of the judgment to the parties is consistent with the statutory procedure of 30 days to vacate judgment when (1) a plaintiff did not appear at the hearing under Code of Civil Procedure section 116.720 and (2) a defendant did not appear at the hearing under Code of Civil Procedure section 116.730.</p> <p>Thirty days is a reasonable time for the parties to inspect the notice of entry of judgment for clerical or other errors and seek to correct or vacate the judgment. The thirty days would also coincide with the 30-</p>

day period for filing a notice of appeal by the defendant under Code of Civil Procedure section 116.750. That section provides that “the time for filing a notice of appeal is not extended by the filing of a request to correct a mistake or by virtue of any subsequent proceedings on that request.” However, the section also provides “a new period for filing notice of appeal shall begin on the delivery or mailing of notice of entry of any modified judgment.” (Code Civ. Proc., § 116.750 (c).)

To reduce the opportunity to file an appeal on a corrected judgment after the small claims appellate division has already rendered judgment in a trial de novo, the time to file a motion to correct or vacate the judgment would be limited to 30 days after notice of entry of judgment. Each party would also be limited to filing one motion, to prevent a party from filing successive motions to correct or vacate the judgment.

The text of the proposed amendment follows.

Attachment

Code of Civil Procedure section 116.725 would be amended to read:

116.725. Court's Power to Correct or Vacate Judgment Not Affected by Chapter.

~~Nothing in this chapter shall be construed to prevent a court from correcting a clerical error in a judgment or from setting aside and vacating a judgment on the ground of an incorrect or erroneous legal basis for the decision.~~

A motion to correct a clerical error in a judgment or to set aside and vacate a judgment on the ground of an incorrect or erroneous legal basis for the decision may be made as follows:

(a) By the court on its own motion at any time or

(b) By a party within 30 days after the clerk mails notice of entry of judgment to the parties. Each party may file only one motion to correct a clerical error or to set aside and vacate the judgment on the ground of an incorrect or erroneous legal basis for the decision.